

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Application by Qwest Communications)	WC Docket No. 02-314
International, Inc., for Authorization to)	
Provide In-Region, InterLATA Services)	
In Colorado, Idaho, Iowa, Montana,)	
Nebraska, North Dakota, Utah,)	
Washington & Wyoming)	

COMMENTS OF PAGEDATA

By its actions, Qwest has established a pattern of discriminatory or illegal conduct that continues today. Qwest is still in violation of state and federal regulations for failure to file all interconnection agreements. This is cause for the denial of Qwest's section 271 application.

Qwest is splitting hairs with the Federal Communications Commission ("FCC") and state Commissions by differentiating between CMRS interconnection agreements and CLEC interconnection agreements. Qwest has knowingly and willingly not filed CMRS interconnection agreements in all applicable states in the same manner that it was forced to file agreements in Iowa. Sections 251 and 252 do not distinguish between the two types of interconnection agreements, and they are to be filed in the same style and manner.

Non-discrimination by ILECs is a bedrock principle of the Act. The filing of interconnection agreements, and the pick and choose requirements of Section 252, give life to that principle. By not filing the previously unfiled CMRS and CLEC

interconnection agreements simultaneously Qwest knowingly prevented other carriers from picking and choosing those provisions. This demonstrates hostility to the non-discrimination concept and raises serious questions about how Qwest will cooperate with local competition efforts in the future.¹

Qwest claimed that the unfiled agreements involved a good faith dispute regarding the scope of Qwest's obligation to file certain interconnection agreements under 47 U.S.C. §252(a). Qwest filed a Petition for Declaratory Order with the FCC asking for a determination of what agreements needed to be filed. Qwest used this delay and stall tactic to hinder investigations by states with fewer resources than Minnesota and Iowa. Qwest filed CMRS and CLEC agreements in Iowa because Iowa has a powerful PUC with investigative abilities, but Qwest did not file all of these same agreements in other applicable states, including Idaho. For example, PageData has attached in Exhibit 5 to PageData's Reply Motion, copies of the Arch and PageNet interconnection agreement amendments that were filed with Iowa but were not filed in Idaho and other states. PageData has attached and incorporates herein its Reply to Qwest's Answer to PageData's Motion to Re-Open Qwest Section 271 Proceedings in Idaho Docket No. USW-T-00-3.

This deception distorts Qwest's credibility and commitment for providing nondiscriminatory access to its network. Qwest was under the same obligation to file the CMRS agreements that were applicable in Idaho and other states at the same time Qwest filed the previously unfiled CLEC agreements.

¹ Minnesota Administrative Law Judge's Findings of Fact, Conclusions and Recommendation In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements; OAH Docket No. 6-2500-14782-2, dated September 20, 2002, ¶ 357

Three Idaho CMRS companies teamed together and filed a formal complaint against Qwest in Idaho for Qwest discriminating against local Idaho carriers for Qwest failing to file interconnection agreements. Two other CMRS companies made informal inquiries about Qwest in Idaho for the same discrimination. During the hearing process for the formal complaint with the Idaho PUC, Qwest had already settled with Arch, PageNet and Metrocall, but never offered the local Idaho paging companies the same terms and conditions as in the unfiled interconnection agreements. Idaho carriers have not been afforded the ability to adopt Qwest's own subsidiary's (US WEST New Vector) interconnection agreement under Section 252(i), nor the Arch/PageNet interconnection agreement as fully filed in Iowa.

By failing to file the Arch and PageNet interconnection agreements for approval by the Idaho Commission and other states, Qwest violated 47 U.S.C. §§ 252(a) and (e).

Section 252 requires public filing of interconnection agreements to ensure that ILECS do not discriminate through the use of unfiled agreements. § 252(i) puts every similarly situated CLEC on a level playing field in terms of its relationship with Qwest, but the statutory mechanism works only if Qwest's agreements related to pricing and other issues are actually filed with the Commission. The easiest way that an ILEC can discriminate between CLECs is by adjusting its pricing to favor one CLEC over another.²

The smaller states do not have the resources to reopen Qwest's 271 applications. By the FCC enforcing the law that requires Qwest to file these agreements, it would automatically resolve numerous disputes between Qwest and other carriers in Idaho and other states. This will also unburden state PUCs for having to individually go through to correct this discrimination.

The enforcement of FCC rules and regulations, the section 271 process and the CMRS auction process are all intertwined in order to have a more competitive market. Smaller competitors need overall enforcement from the FCC to protect the auction process. Smaller carriers bid on frequencies and expect the law to be enforced so the smaller carriers can exercise the privileges in the licenses they bought. This brings into question the integrity of the auctions and equal enforcement of the FCC rules and regulations after the licenses were purchased. Small carriers are entitled to the same protection as the large carriers. Consistent enforcement of the rules and regulations is mandatory, especially the fiduciary duty of the FCC to enforce the filing of interconnection agreements so they can be available under pick and choose on a nondiscriminatory basis.

MTA and regional licenses that were bought in the auction cross several state boundaries. Multi-state interconnection agreements that are not filed in all applicable states mean smaller carriers cannot get the same consistency in interconnection agreements state to state. For example the complete Arch and PageNet interconnection agreements have not been filed for pick and choose in all of Qwest's 14 state territory.

Qwest has repeatedly asserted on the record that it is providing nondiscriminatory interconnection throughout their 14 states. However, it has been shown in various individual state proceedings that this is incorrect. It is inconceivable that Qwest could meet the nondiscrimination criteria as set out by the FCC in the 271 process with so many unfilled interconnection agreements still outstanding.

² Minnesota Administrative Law Judge's Findings of Fact, Conclusions and Recommendation in the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements; OA Docket No. 6-2500-14782-2, dated September 20, 2002, ¶ 134.

PageData recommends that the Federal Communications Commission deny the supplemental application of Qwest for authority under section 271 of the Telecommunications Act of 1996, to provide in-region, interLATA services in the state of Idaho until such time that Qwest has demonstrated that they have filed all applicable interconnection agreements (whether CLECs, CMRS, IXC's, etc.) in Idaho and other states, made the terms available to other carriers under pick and choose, and provide nondiscriminatory access to their network.

Respectfully Submitted,

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